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6 Attorneys for Fire Victim Claimants, including Ivan Lane and Marcia Lane

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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 *In re:*

12 PG&E CORPORATION

13 -and-

14 PACIFIC GAS AND ELECTRIC
COMPANY

15 Debtors.

16 ☐ Affects PG&E Corporation

17 ☐ Affects Pacific Gas & Electric

18 ☒ Affects Both Debtors

19 *All papers shall be filed in the Lead Case,*
20 *No.19-30088 (DM)*

) **Case No. 19-30088 (DM)**
) Chapter 11
) (Lead Case)
) (Jointly Administered)
) **MOTION TO ALLOW/DEEM TIMELY**
) **LATE FILING OF PROOF OF CLAIM**
) **BY IVAN LANE AND MARCIA LANE;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF; DECLARATION OF IVAN**
) **LANE**
) Date: June 7, 2022
) Time: 10:00 a.m.
) Place: **To Be Held Telephonically**
) United States Bankruptcy Court
) Courtroom 17
) 450 Golden Gate Avenue
) 16th Floor
) San Francisco, CA
Judge: Honorable Dennis Montali

Objection Deadline: May 31, 2022

24 The Kane Law Firm respectfully files this motion to allow the late filing of a proof of
25 claim and deem the proof of claim as having been timely filed for the moving party herein, Ivan
26 Lane and Marcia Lane.
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1 I.

2 **SUMMARY OF ARGUMENT**

3 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
4 prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd.*
5 *Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on
6 whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be
7 considered are as follows:

- 8 1. The danger of prejudice to the Debtor,
9 2. The length of delay and its potential impact on judicial proceedings,
10 3. The reason for the delay, including whether it was within the reasonable control of the
11 movant, and
12 4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

13 In this case, Ivan Lane lived with his wife, Marcia Lane at 6232 Leicester Drive, Magalia,
14 California 95954. The Lane's home did not burn. However, they were forced to evacuate and
15 were away from their home for over a month. When they returned, they found their home
16 covered in ash and soot. They were unaware that they could file for emotional distress and soot
17 damage to their home until recently.

18 As set forth below, the movant meets all these factors. Indeed, if this motion is *not* granted
19 it is the movant who will suffer substantial prejudice.

20 II.

21 **PROCEDURAL BACKGROUND**

22 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
23 Company ("Debtors") filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
24 Court entered an order establishing October 21, 2019 ("the bar date") as the deadline for Fire
25 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
26 extended to December 31, 2019 ("the "extended bar date."). *See* Dkt. 4872.

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III.

FACTUAL BACKGROUND

Ivan and Marcia Lane lived at 6232 Leicester Drive, Magalia, CA. They were forced to evacuate and were away from their home for over a month. Upon returning, they found their home covered in soot and ash. They were unaware that they could file a claim for this type of damage as well as for emotional distress until recently. They have filed a Proof of Claim and an amended Proof of Claim, which was assigned Claim Number 108344. (See Exhibit A)

IV.

ARGUMENT

The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

(b) Enlargement.

(1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) **on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.**

Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

Determination of excusable neglect has been interpreted by the United States Supreme Court as an equitable consideration.

“We conclude the determination at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include. . .the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc. Ltd.P’ship*, 507 U.S. 380, 395 (1993)

Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.

(“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

Further, the delay is not significant. The Trust has only completed determinations (not

1 reconsiderations or appeals) on approximately 50% of all claims. Allowing the late claim will not
2 delay the proceedings.

3 The reason for the delay in filing a claim was that Ivan and Marcia Lane simply
4 misunderstood the process. (See Declaration of Ivan Lane). Excusable neglect will be found
5 even where sophisticated attorneys miss a deadline. *ZiLOG, Inc. v. Corning (In re ZiLOG,*
6 *Inc.)*, 450 F.3d 996, 1006 (9th Cir. 2006). The case for excusable neglect is even more compelling
7 when the mistake was made by an unrepresented layperson. *Id.*

8 Further, Ivan and Marcia Lane acted in good faith. The failure to file was not based on
9 litigation tactics where a party deliberately misses a deadline to gain advantage. (See e.g., *Venice*
10 *Baking Co. v. Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533 where relief was denied
11 because counsel purposefully chose not to oppose a motion as a litigation tactic). Here the delay
12 was inadvertent and the movant's lack of understanding of the claims process after a trust fund
13 had already been established to satisfy the claim.

14 And, finally, the likelihood of injustice is great if this claim is not permitted. Ivan and
15 Marcia Lane are Camp Fire victims whose primary avenue for compensation is through this
16 bankruptcy.

17 **V.**

18 **CONCLUSION**

19 For the reasons set forth above, Movant respectfully requests that this Court enter an
20 Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

- 21 1. Granting the Motion;
22 2. Finding that the Movant be allowed to file a Proof of Claim and deem it as having been
23 timely filed;

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3. Granting such other or further relief as the Court deems just and proper.

Dated: May 3, 2022

Respectfully submitted,

THE KANE LAW FIRM

By: _____/s/_____
BONNIE E. KANE
Attorneys for Ivan Lane and Marcia Lane